

## § 298.22

which there is no waiver and their assembly when comprising any part of the hull and superstructure of a Vessel.

(d) *Substantiation of Actual Cost.* (1) Before we make distribution from the Escrow Fund or Construction Fund (described in §§ 298.33 and 298.34), and prior to our final Actual Cost determination for each Vessel or Shipyard Project, you must submit to us documents substantiating all claimed costs eligible under paragraph (b) of this section or, alternatively, appropriate certification of such costs by an agent who has received our approval.

(2) These documents may include, but need not be limited to, copies of invoices, change orders, subcontracts, and where we require, statements from independent certified or independent licensed public accountants that the costs for which you seek payment or reimbursement were actually paid or are payable for the construction of a Vessel or Shipyard Project.

(3) You must summarize, index and arrange these documents according to cost categories by following the directions contained in our forms.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to our approval. After a review of the base contract price and the escalation clauses, we shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by us. We must subsequently approve the amount of escalation cost you claimed as a component of Actual Cost.

(f) *Monies received in respect of construction.* (1) If you or any Person acting on your behalf, from time to time receives moneys due for construction of a Vessel or Shipyard Project (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, you shall give us written notice of such fact.

(2) As long as we have not paid the Guarantees, you or other recipient shall promptly deposit these moneys with us to be held by the Depository in accordance with the Depository Agreement.

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(3) We will determine the extent to which Actual Cost is to be reduced by these moneys.

(4) In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel or Shipyard Project owner of liquidated damages for late delivery of the Vessel or Shipyard Project.

(5) If we have paid the Guarantees, you or other recipient must promptly pay these moneys, including any liquidated damages, to us for deposit into the Maritime Guaranteed Loans account.

(g) *Depreciated Actual Cost.* After a Vessel or Shipyard Project has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees will be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel or Shipyard Project.

[65 FR 45152, July 20, 2000, as amended at 67 FR 61282, Sept. 30, 2002]

## § 298.22 Amortization of Obligations.

(a) Generally, after delivery or completion of Shipyard Project, and until maturity of the Obligations, provisions of the Trust Indenture or other part of the Documentation require you to make periodic payment of principal and interest on the Obligations.

(b) Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case the amortization shall be in equal payments of principal (level principal), unless we consent to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level payment). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the level principal or level payment basis at any time prior to maturity of the Obligations, except where:

(1) You can demonstrate to our satisfaction that there will be adequate funds to discharge the Obligations at maturity;

(2) You establish a fund with the Depository in which you deposit an equal

annual amount necessary to redeem the outstanding Obligations at maturity; or

(3) With regard to Eligible Export Vessels, in accordance with such other terms as we determine to be more favorable and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

[65 FR 45152, July 20, 2000, as amended at 67 FR 61282, Sept. 30, 2002]

#### § 298.23 Refinancing.

(a) We may approve guarantees of Obligations to be secured by one or more Vessels or a Shipyard Project issued to refinance existing Title XI debt for either Vessels or for Shipyard Project and existing non-Title XI debt, so long as the existing debt has been previously issued for one of the purposes set forth in sections 1104(a)(1) through (4) of the Act. Section 1104 (a) (1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel or Shipyard Project, the proceeds of such Obligations will be applied to the construction, reconstruction or reconditioning of other Vessels or Shipyard Project or as provided in § 298.24.

(b) We shall require any security lien on the Vessel(s) or Shipyard Project to be discharged immediately before we place a Mortgage or other security interest on any of the above assets. You must satisfy all necessary eligibility requirements as set forth in subpart B of this part, including economic soundness.

#### § 298.24 Financing a Vessel more than a year after delivery.

(a) We may approve Guarantees for a Vessel which has been delivered (or redelivered in the case of reconstruction or reconditioning of a Vessel) more than one year prior to the issuance of the Guarantees only if:

(1) The issuance of the Guarantees would otherwise satisfy the requirements of the Act and the regulations in this part, and

(2) The proceeds of the Obligation financing such existing Vessel are used to finance:

(i) The construction, reconstruction, or reconditioning of a different Vessel within one year of that Vessel's delivery or redelivery, as the case may be, or

(ii) Facilities or equipment pertaining to marine operations. Such facilities or equipment must be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the berthing area, excluding over-the-road equipment (other than chassis and containers), permanent or semipermanent structures and real estate, as well as new or less than one year old.

(b) At the Closing of Guarantees covered by this section, you must deposit the proceeds of the Obligation into an Escrow Fund established to pay for the cost unless you demonstrate to our satisfaction that all such costs have been paid.

#### § 298.25 Excess interest or other consideration.

We shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for:

(a) The payment to an Obligor of interest, or other compensation for services which have not been performed, in a manner that such compensation or payment is being provided as interest in excess of the rate approved by us; or

(b) Grants of security to an Obligor in addition to the Guarantees.

#### § 298.26 Lease payments.

You must obtain our approval of the amount and conditions of lease or charter hire payments if the payment of principal and interest on Obligations would be dependent, in any way, upon the lease or charter hire payments for a Vessel or Shipyard Project.

#### § 298.27 Advances.

(a) *In general.* (1) In accordance with section 207 and Title XI of the Act, we have the discretion to make or commit to make an advance or payment of funds to, or on behalf of the owner, or operator or directly to any other person or entity for items, including, but not limited to:

- (i) Principal,
- (ii) Interest,